

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

NICHOLAS BERTRAM, individually and on
behalf of all others similarly situated,

Plaintiff,

V_t

EDUCATION LOAN SOURCE, INC., a
Delaware corporation,

Defendant.

NO. '13CV1809 L NLS

**CLASS ACTION COMPLAINT FOR
DAMAGES AND INJUNCTIVE
RELIEF**

Plaintiff, Nicholas Bertram, by his undersigned attorneys, for this class action complaint against Defendant Education Loan Source, Inc. (“ELS”) and its present, former or future, subsidiaries, affiliates, agents, and/or other related entities, alleges as follows:

I. INTRODUCTION

1.1 Nature of Action. Since March 2013, Plaintiff Bertram has received multiple telemarketing calls on his cellular telephone made by or on behalf of Defendant ELS marketing Defendant’s products and services, and Defendant did not stop calling when Plaintiff so requested. Plaintiff brings this action against Defendant for violations of the “Do-Not- Call” provisions of Telephone Consumer Protection Act, 47 U.S.C. § 227 *et seq.* (“TCPA).

II. JURISDICTION AND VENUE

2.1 Subject Matter Jurisdiction. This Court has subject matter jurisdiction over Plaintiff's TCPA claims pursuant to 28 U.S.C. § 1331 because Plaintiff's TCPA claims arise under the laws of the United States, specifically 47 U.S.C. § 227.

2.2 Personal Jurisdiction. This Court has personal jurisdiction over Defendant because its principal place of business is in California.

2.3 Venue. Venue is proper in this District pursuant because Defendant's principal place of business is in this District.

III. PARTIES

3.1 Plaintiff resides in Lakeland, Florida. The calls in question were received on his cellular telephone in Lakeland and at other locations in the State of Florida.

3.2 Defendant is a Delaware corporation with its principal place of business in San Diego, California, and it conducts business throughout the United States.

3.3 This action arises out of Defendant's continual and repeated violations of the Do-Not-Call provisions of the TCPA, 47 U.S.C. § 227 (c), 47 C.F.R. § 64.1200 (c)-(f) by placing and/or knowingly permitting the placement of telephone calls to the telephones of Plaintiff and other persons for purposes of commercial solicitation in order to encourage them to obtain loans from Defendant, when such persons had registered their telephone numbers on the National Do-Not-Call Registry and/or after they had requested that Defendant and its agents stop calling them.

IV. FACTUAL ALLEGATIONS

4.1 Defendant advertises itself on its webpage as “committed to offering education financing options to students and families by working with our clients, schools and financial institutions, to determine what will work best for your given population.”

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2 4.2 In approximately March 2013, Plaintiff received a telemarketing call from
3 Defendant during which a live telemarketer offered him assistance in finding a college or
4 technical school so that he might further his education. During that initial conversation,
5 Plaintiff advised Defendant he was not interested in Defendant's products or services and
6 requested that Defendant stop calling him. Since expressly asking Defendant to stop calling
7 him, Plaintiff has received multiple telephone calls from Defendant on his cellular telephone
8 soliciting him to utilize Defendant's products and services and, on each such occasion, Plaintiff
9 has asked Defendant to stop calling him, but the calls continue. After receiving multiple calls
10 and on each occasion asking that Defendant stop calling, Plaintiff telephoned Defendant at 866-
11 758-7123, the number on Defendant's website <http://www.educationloansource.com/>, and left a
12 message that, if the calls did not stop, Defendant would have to face the consequences of its
13 illegal actions. For a time after Plaintiff left this message, the calls subsided, but they resumed
14 again recently when Plaintiff received another solicitation call from Defendant on his cellular
15 telephone on June 23, 2013. Plaintiff brings this lawsuit as a Class action on behalf of himself
16 and all other similarly situated persons, as a proposed Class pursuant to Rule 23.
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19 4.3 The Class is defined as:
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21 All persons who received one or more calls from Defendant and were
22 on the National Do-Not-Call Registry, or were or should have been on
23 Defendant's Internal Do-Not-Call Registry because such persons had
24 requested Defendant to stop calling, when the calls were received.
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27 4.4 On information and belief, the Class consists of a large number of persons,
28 making joinder impractical. The disposition of the claims of the Class members in a single
29 Class action will provide substantial benefits to all parties and to the Court.
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2 4.5 Plaintiff's claims are typical of the claims of the Class, in that Plaintiff, like
3 other Class members, received unsolicited commercial solicitations from Defendant while on
4 the National Do-Not-Call Registry and/or after asking Defendant to stop calling.

5 4.6 There are numerous questions of law and fact common to Plaintiff and the Class,
6 and these questions predominate over any questions that may affect individual Class members,
7 and include, but are not limited to, the following:

8 a. Whether Defendant's placing telephone calls to persons for purposes of
9 commercial solicitation in order to encourage them to obtain student loans and otherwise utilize
10 Defendants products and services when such persons had registered their telephone numbers on
11 the National Do-Not-Call Registry and/or had requested that Defendant and its agents stop
12 calling them violates the Telephone Consumer Protection Act ("TCPA") 47 U.S.C. § 227 (c)
13 and 47 C.F.R. § 64.1200 (c)-(f);

14 b. Whether Plaintiff and the Class are entitled to presumptive statutory
15 damages of \$500 per violation under the TCPA;

16 c. Whether Plaintiff and the Class are entitled to declaratory relief; and
17 d. Whether Plaintiff and the Class are entitled to compensatory and
18 exemplary damages, and the measure of such damages.

19 4.7 Plaintiff will fairly and adequately represent and protect the interests of the
20 Class. He has retained counsel with substantial experience in prosecuting consumer class
21 actions, including actions under the TCPA. Plaintiff will vigorously prosecute this action on
22 behalf of the Class. Neither Plaintiff nor his counsel have any interests adverse to those of the
23 Class.

4.8 A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Absent a class action, Class members would find the cost of litigating their individual claims to be prohibitive, and would have no effective remedy at law. Because of the relatively small size of the individual Class members' claims it is unlikely that individual Class members could afford to seek legal redress for Defendant's wrongful conduct. Absent a class action, Class members will continue to experience unwanted calls and Defendant's misconduct will proceed without a remedy to Plaintiff and the Class. Class action treatment of common questions of law and fact is also superior to multiple individual actions or piecemeal litigation in that it conserves the resources of the courts and the litigants, and promotes consistency and efficiency of adjudication.

4.9 Defendant has engaged in a common course of conduct toward Plaintiff and members of the Class by subjecting them to unlawful telephone solicitation calls. The common issues arising from this conduct that affect Plaintiff and members of the Class predominate over any individual issues. Adjudication of these common issues in a single action has important and desirable advantages of judicial economy.

V. FIRST CLAIM FOR RELIEF
(Violation of the Telephone Consumer Protection Act)

5.1 Defendant has violated 47 U.S.C. 227(c) and 47 CFR 64.1200 *et seq* promulgated pursuant to 47 U.S.C. 227(c) by placing solicitation calls to Plaintiff and members of the Class when their telephone numbers were on the National Do-Not-Call Registry and when those numbers were or should have been on Defendant's own Internal Do-Not-Call Registry because Plaintiff and members of the Class had requested Defendant to stop calling.

5.2 As a result of Defendant's said violations, Plaintiff and members of the Class are entitled to injunctive relief enjoining Defendant's unlawful conduct, as well as statutory damages, including treble damages, for each of Defendant's violations of the law.

VI. PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of himself and the Class, request that the Court enter judgment against Defendant and award the following relief:

- A. Certification of the proposed Class pursuant to FRCP 23(b)(2) and FRCP 23(b)(3);
- B. Granting declaratory, equitable, and/or injunctive relief as permitted by law to ensure that Defendant will not continue to commit do-not-call violations;
- C. Judgment against Defendant for statutory damages of not less than \$500 for each violation committed by Defendant including, where applicable, more than one legal violation per call, plus treble damages for each intentional or willful violation, and other damages as permitted by law;
- D. Designation of Plaintiff as representative of the Class and his counsel as Class Counsel;
- E. An award of statutory, compensatory, and exemplary damages for the acts complained of herein;
- F. An award of costs and attorneys' fees, as allowed by law; and
- G. Such other or further relief as the Court determines equitable.

DATED: August 5, 2013

WILLIAMSON & WILLIAMS

By /s/ Rob Williamson
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